

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2015 JAN 26 P 1:20

In re MAIN STREET POWER MAIL, INC.)

CIVIL DIVISION

Docket No. _____

56-1-15wncv

ASSURANCE OF DISCONTINUANCE

1. Main Street Power Mail, Inc. ("Main Street Power Mail") is an Indiana corporation with offices located at 400 South Main Street, Sheridan, Indiana 46069.

2. Main Street Power Mail generates "leads" for other businesses by sending mailings to consumers requesting responses containing personal information, which information is then provided to the third-party businesses.

3. Between March 2012 and March 2013, Main Street Power Mail mailed over 30,000 copies of a solicitation coded "F202" (Exhibit 1) to Vermont consumers, on information and belief many of them older Vermonters.

4. The mailing clearly implied that Main Street Power Mail was simply offering to provide information to the recipient, free of charge, on a life insurance product. Specifically, it stated (all emphases in the original):

- "NEW << YEAR>> BENEFIT UPDATE ... FOR << STATE>> CITIZENS ONLY"
- "This is a personal announcement to all <<State>> citizens age <<age>>."
- "You may now apply for a NEW state-regulated life insurance program to pay Final Expenses for just pennies a day. ... Return this card today and you will receive the latest information ..."
- "To receive complete NO-COST information on this newly-approved plan ..., return this postage-paid card TODAY."
- "TO SEE IF YOU QUALIFY, MAIL THIS POSTAGE PAID CARD TODAY TO RECEIVE THIS VITAL INFORMATION."

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

- ***“IMPORTANT—<<STATE>> CITIZENS MAY ALSO RECEIVE A FREE MEMORIAL GUIDE BY RETURNING THIS POSTAGE-PAID CARD.”***
- ***“☐ YES! Please see that I receive the information on the NEW state regulated life insurance program ..., including the NO-COST MEMORIAL GUIDE.”***

5. In addition, the outside of the mailing stated, “Information Concerning **NEW <<YEAR>> BENEFIT UPDATE FOR <<STATE>> CITIZENS.**”

6. The mailing asked those who received it to fill out and return a card containing personal data, including their age and the name and age of their spouse.

7. Despite the mailing’s clear message that its purpose was to provide free information to consumers, the real purpose was to persuade consumers to respond with personal data for use in creating leads for insurance agents.

8. That real purpose was nowhere stated or implied in the mailing.

9. Over 980 Vermonters responded to the mailing, revealing their personal data to Main Street Power Mail.

10. The Vermont Attorney General alleges that the failure to disclose the material fact that responses to commercial communications will be followed up by a salesperson’s contact is an unfair trade practice under the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a), based on longstanding precedent to that effect from the Federal Trade Commission.

11. Main Street Power Mail denies that it violated any Vermont or federal law or unfair trade practice standard.

12. The Vermont Attorney General is willing to accept this Assurance of Discontinuance under 9 V.S.A. § 2459.

INJUNCTIVE RELIEF

13. Main Street Power Mail shall comply strictly with all provisions of Vermont and federal law, including the Vermont Consumer Protection Act, 9 V.S.A. §§ 2451 *et seq.*

14. Among other things, Main Street Power Mail shall not contact any Vermont consumer, by mail or other means, for the purpose, in whole or in part, of generating business leads without clearly and conspicuously disclosing the fact that if the consumer responds to the contact, he or she may be solicited to purchase a described product or service (for example, “An agent may contact you to sell insurance products.”).

PAYMENT TO THE STATE

15. Main Street Power Mail shall pay to the State of Vermont the sum of \$90,000.00 (ninety thousand dollars). In light of the fact that in July 2014, the building in Sheridan, Indiana, where Main Street Power Mail conducted its business burned to the ground, resulting in a total of loss of the company’s physical assets and completely disrupting its operations, the following terms shall apply to this payment:

a. No later than January 30, 2015, Main Street Power Mail and Kyle Malott, the company’s owner and principal officer, whose residential address is 577 Viking Lair Road, Westfield, Indiana 46074 (hereinafter “Kyle Malott”), shall make a first payment of thirty thousand dollars (\$30,000.00) to the State of Vermont.

b. Main Street Power Mail and Kyle Malott shall pay the remaining sixty thousand dollars (\$60,000.00) due under this paragraph 15 in six (6) equal payments of ten thousand dollars (\$10,000.00) each, plus compound interest in the amount of six (6) percent per annum, due the first day of each month starting on March 1, 2015, and ending on August 1, 2015.

c. The liability of Main Street Power Mail and Kyle Malott under subparagraphs (a) and (b) of this paragraph 15 shall be joint and several.

d. No later than January 30, 2015, Mr. Malott shall provide to the State of Vermont a signed and notarized personal promissory note for the sixty thousand dollars (\$60,000.00) due under subparagraph (b) of this paragraph 15, in a form acceptable to the State, guaranteeing payment of the six (6) equal payments of ten thousand dollars (\$10,000.00) each plus compound interest in the amount of six (6) percent per annum due the first day of each month starting on March 1, 2015, and ending on August 1, 2015, under subparagraph (b) of this paragraph 15.

e. All payments and documents to be provided to the State of Vermont under this paragraph 15 shall be mailed securely in care of the Vermont Attorney General's Office, 109 State Street, Montpelier, Vermont 05609.

OTHER PROVISIONS

15. This Assurance of Discontinuance represents a full and final settlement of any and all claims against Main Street Power Mail, including any claims of derivative liability against its owners, principals, employees, or agents, including but not limited to Kyle Malott, by the State of Vermont and any of its subdivisions or agencies that relate to the subject matter of this Assurance of Discontinuance, provided that such claims of derivative liability shall not be considered settled as applied to the payment obligation set out in paragraph 14, above, until such time as said payment is made in full, at which time they shall be considered fully and finally settled.

16. This Assurance of Discontinuance may be executed in counterparts, and a facsimile or .pdf signature shall have the same force and effect as an original signature.

17. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 1/21/15

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Elliot Burg
Elliot Burg
Special Assistant Attorney General

Dated _____

MAIN STREET POWER MAIL, INC.

By: _____
Its Authorized Agent

APPROVED AS TO FORM:

Elliot Burg
Elliot Burg
Special Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, Vermont 05609
For the State of Vermont

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Kimberly B. Cheney, Esq.
125 Mountain Road
Stowe, Vermont 05672
For Main Street Power Mail, Inc.

17. The Washington Superior Court shall retain jurisdiction for purposes of enforcing this Assurance of Discontinuance.

Dated 1/21/15

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Elliot Burg
Elliot Burg
Special Assistant Attorney General

Dated 1/21/15

MAIN STREET POWER MAIL, INC.

By: Lynda Watson / President
Its Authorized Agent

APPROVED AS TO FORM:

Elliot Burg
Elliot Burg
Special Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, Vermont 05609
For the State of Vermont

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ATTORNEY
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109 State Street
Montpelier, VT
05609

Kimberly B. Cheney
Kimberly B. Cheney, Esq.
125 Mountain Road
Stowe, Vermont 05672
For Main Street Power Mail, Inc.

NEW <<YEAR>> BENEFIT UPDATE

FOR <<STATE>> CITIZENS ONLY

This is a personal announcement to all << State >> citizens age << age >>.

You may now apply for a NEW state-regulated life insurance program to pay Final Expenses for just pennies a day, REGARDLESS OF YOUR MEDICAL CONDITION, EVEN IF YOU'VE BEEN TURNED DOWN BEFORE.

Return this card today and you will receive the latest information on how this Special Program will pay **100%** of all funeral expenses not paid by government funds, up to << dollar amount >> (**TAX FREE**), for each << State >> citizen covered.

It is VERY IMPORTANT THAT YOU KNOW all the benefits available to you. To receive complete NO-COST information on this newly-approved plan **DESIGNED FOR ALL << STATE >> CITIZENS**, return this postage-paid card TODAY.

TO SEE IF YOU QUALIFY, MAIL THIS POSTAGE PAID CARD TODAY TO
RECEIVE THIS VITAL INFORMATION...REQUESTS WILL BE PROCESSED
IN THE ORDER RECEIVED.

**IMPORTANT - << STATE >> CITIZENS MAY ALSO RECEIVE
A FREE MEMORIAL GUIDE BY RETURNING
THIS POSTAGE-PAID CARD.**

All << State >> citizens may apply for this NEW program regardless of their medical condition.

Not affiliated with or endorsed by any government agency.

(tear here)

☐ **YES!** Please see that I receive the information on the NEW state regulated life insurance program designed for ALL << State >> Citizens << age >>, including the **NO-COST MEMORIAL GUIDE**.

Name: _____

Phone: (____) _____

Spouse's Name: _____

Age: _____

Husband: _____ Wife: _____

(Note!) Area code & phone number to insure proper information routing.

Signature: _____

To Open This Side - Slide Finger Under This Edge

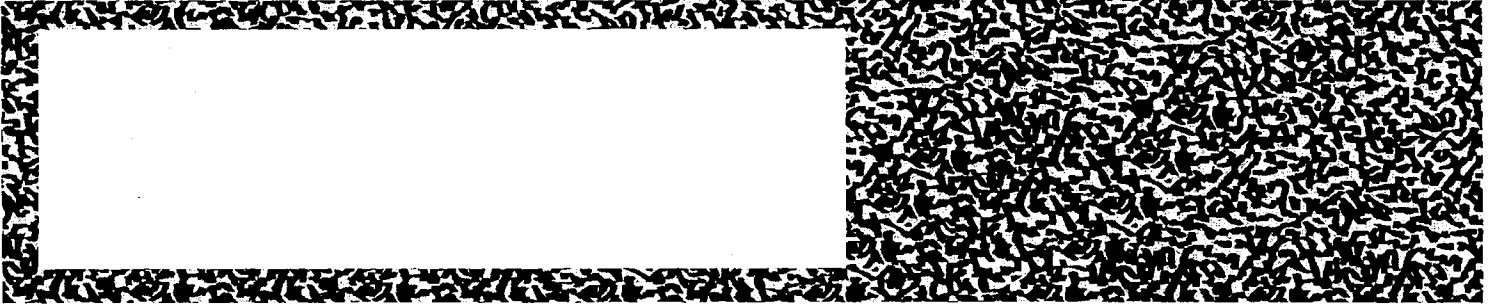
Information Concerning:

**NEW <<YEAR>> BENEFIT UPDATE
FOR << STATE >> CITIZENS**



PRESORT
STANDARD

U.S.
POSTAGE
PAID
MSS



IMPORTANT DOCUMENT ENCLOSED

NEW SUPPLEMENTAL INSURANCE BENEFITS FOR << STATE >> CITIZENS

OPEN IMMEDIATELY - DO NOT DELAY

Don't Delay: Request will be processed in the order received.

Please Return Today!

**IMPORTANT - FOR << STATE >> CITIZENS
<<YEAR>> BENEFIT UPDATE**